

Message Text

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TO AMEMBASSY BUCHAREST

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E.O. 11652: N/A

TAGS: BDIS RO

SUBJ: KAISER TRADING CO. (KTC) COMPLAINT AGAINST CHIMIMPORT

1. ACTING ON INSTRUCTIONS FROM KTC PRESIDENT HOLBROOK, KAISER INDUSTRIES VICE PRESIDENT DUFFY CALLED AT COMMERCE TO BRIEF DEPARTMENT ON COMPLAINT AGAINST ROMANIAN FTO CHIMIMPORT. COMPLAINT INVOLVES WHAT KTC CALLS NON-FULFILLMENT BY CIMIMPORT OF CONTRACT CALLING FOR SALE TO KTC OF 40,000 METRIC TONS OF BAGGED SODA ASH (LIGHT). DELIVERY SCHEDULED FOR 20,000 MT FIRST HALF OF 1974 AND REMAINDER IN SECOND HALF. PRICE FOR FIRST SHIPMENT 80 U.S. DOLLARS PER MT, FOB COSTANZA, WITH PRICE FOR SECOND HALF SHIPMENT TO BE FIXED PRIOR TO MAY 30, 1974. BACKGROUND ON DISPUTE FOLLOWS.

2. FOLLOWING SEVERAL MEETINGS WITH CHIMIMPORT IN BUCAHREST, A MEETING WAS ARRANGED IN OAKLAND CALIFORNIA ON NOV 16, 1973 WITH GHEORGHE DALEA, MANAGING DIRECTOR OF CHIMIMPORT. DURING OAKLAND

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VISIT A CONTRACT FOR THE SALE OF SODA ASH WAS SIGNED

(CHIMIMPORT NO. 42069/30112) BY DALEA. THE CONTRACT WAS CONDITIONAL UPON AGREEMENT BY DECEMBER 14, 1973 BY BOTH PARTIES ON GENERAL CONDITIONS, TRANSPORTATION CONDITIONS, AND AN ADDENDUM TO THE CONTRACT. KAISER CONSIDERED THESE CONDITIONS AS MINOR, NECESSARY FOR ORDER HANDLING AND COST CONTROL. KTC'S DIRECTOR OF ITS EUROPEAN OFFICE, WILSON, MET WITH CHIMIMPORT'S GALEA AND PIRVU IN DALEA'S ABSENCE IN BUCHAREST ON DECEMBER 13 AND 14. REPORTEDLY THE THREE REACHED AN ORAL REPEAT ORAL AGREEMENT ON ALL PROVISIONS OF THE CONTRACT ON DECEMBER 14. HOWEVER WHEN CONTRACT SUBSEQUENTLY PRESENTED FOR FINAL SIGNING CHIMIMPORT HAD ADDED TWO NEW CLAUSES. FIRST CLAUSE PROVIDED FOR 100 PERCENT PENALTY PLUS DAMAGES SHOULD SODA ASH NOT BE SOLD IN U.S. SECOND CLAUSE CONCERNED LATE PICKUP BY KAISER AND PROVIDED FOR IMMEDIATE CANCELLATION OF CONTRACT AND 50 PERCENT PENALTY TO BE LEVIED ON COMPANY. ON DEC 17 HOLBROOK CABLED DALEA GIVING HIM HIS PERSONAL ASSURANCE ON THE U.S.DESTINATION, BUT NOT ACCEPTING THE LATE PICKUP CLAUSE AS PROPOSED BY THE ROMANIANS. INSTEAD KTC OFFERED TO PAY STORAGE AND ASSOCIATED HANDLING COST INCREASES ASSOCIATED WITH ANY SUCH PICKUP DELAY. ON DECEMBER 21 DALEA CABLED HOLBROOK SAYING QUOTE RE SODA ASH WE ARE SORRY THAT BUSINESS COULD NOT BE CONCLUDED IN DUE TIME AS WE HAVE ESTABLISHED BY COMMON AGREEMENT. PRESENTLY THE SITUATION BECAME VERY TIGHT AT SODA ASH BUT SINCERELY HOPE TO HAVE A LITTLE CLEARER SITUATION IN THE FIRST QUARTER OF 1974. UNQUOTE. HOLBROOK REPLIED ON DEC 21 STATING THAT CONTRACT WAS SUBJECT TO MINOR DETAILS WHICH WERE AGREED TO BY WILSON DURING HIS BUCHAREST VISIT DECEMBER 13-14. KTC CONSIDERS CONTRACT IN FORCE AND WILSON WILL CONTACT DALEA TO ESTABLISH SHIPPING SCHEDULE FOR FIRST QUARTER 74.

3. COMMENT AND ACTION REQUESTED. WHILE THE QUESTION EXISTS OF WHETHER THE CONTRACT IS LEGALLY ENFORCEABLE AND BINDING (KTC AGREED TO ARBITRATION IN ROMANIA), KTC PROCEEDED ON BASIS IT HAD A CONTRACT BASED ON THEIR OAKLAND AGREEMENT WITH DALEA, AND WILSON'S ORAL UNDERSTANDING WITH GALEA AND PIRVU. KTC HAS ALREADY CONCLUDED SALES AGREEMENTS FOR THE ROMANIAN SODA ASH WITH SEVERAL MAJOR AMERICAN FIRMS, ALL OF WHOM ARE AWARE OF THE SODA ASH'S ROMANIAN ORIGIN. IN VIEW OF THIS, AND THE QUESTIONABLE NEGOTIATING TACTICS EMPLOYED BY CHIMIMPORT, WE SUGGEST APPROACH TO CHIMIMPORT ALONG LIMITED OFFICIAL USE

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FOLLOWING LINES. KAISER IS ANXIOUS TO AVOID ANY UNFAVORABLE PUBLICITY TO ROMANIA THAT MIGHT ARISE FROM THIS INCIDENT, IN VIEW OF THE COMPANY'S DESIRE TO PARTICIPATE IN SEVERAL ROMANIAN DEVELOPMENT PROJECTS, INCLUDING THE EXPANSION OF THE TIRGOVISTE STEEL MILL. HOWEVER, SHOULD THE SODA ASH SUPPLIES NOT BE FORTHCOMING DOUBTS WOULD ARISE IN THE EYES OF KAISER'S CUSTOMERS AS TO CHIMIMPORT'S EXPORT CAPABILITIES. IT IS TRUSTED THAT CHIMIMPORT WILL DEAL WITH THE MATTER IN THE

SPIRIT OF THE JOINT STATEMENT ON ECONOMIC, INDUSTRIAL AND TECHNOLOGICAL COOPERATION IN WHICH PRESIDENTS NIXON AND CEAUSESCU APPROVED COMMITMENTS BY BOTH COUNTRIES "PROMPTLY AND EQUITABLY TO SETTLE ON AN AMICABLE BASIS COMMERCIAL DISPUTES WHICH MAY ARISE".

4. FYI: YOU MAY, IF YOU THINK IT USEFUL, ALSO INFORM CHIMIMPORT THAT CONSIDERATION BEING GIVEN TO TAKING MATTER UP WITH MINISTRY OF FOREIGN TRADE (MFT). COMMERCE AND STATE ARE CONCERNED ABOUT INCREASING FREQUENCY OF TRADE COMPLAINTS FROM U.S. COMPANIES REGARDING ROMANIAN NON-FULFILLMENT OF EXPORT CONTRACTS. INTENTION IS TO APPROACH MFT IF PROGRESS ON SETTLING DISPUTE NOT IMMEDIATELY FORTHCOMING. KISSINGER

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